



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JAN 31 2008

OFFICE OF
WATER

Russell Long, Program Advisor
Teri Shore, Clean Vessels Campaign Director
Bluewater Network, a division of Friends of the Earth
311 California, Suite 510
San Francisco, CA 94104

Dear Dr. Long and Ms. Shore:

This is to respond to the petition filed by the Bluewater Network on behalf of 53 organizations on March 17, 2000, with an addendum filed on August 2, 2000. This petition requested that the U.S. Environmental Protection Agency (EPA) take specific actions on measures to address pollution from cruise ships. The initial Bluewater Network request formally petitioned EPA for: (1) an in-depth assessment of the volumes and characteristics of the spectrum of waste streams from cruise ships; (2) an analysis of their potential impact on water quality, the marine environment, and human health; (3) an examination of existing federal regulations governing cruise ship waste streams; and (4) formulation of recommendations on how to better control and regulate these waste streams.

The petition provided a series of recommendations regarding what the requested assessment should include. It also urged EPA to implement recommendations outlined in a report prepared in 2000 by the General Accounting Office (GAO, now Government Accountability Office), and to coordinate with other federal agencies, but specifically the U.S. Coast Guard (Coast Guard), regarding follow-up activities recommended in the GAO Report. The petition also requested that EPA produce a report of its investigations and findings. Finally, the petition made specific requests related to certain identified cruise ship waste streams (i.e., sewage, graywater, hazardous wastes, solid wastes, and oily bilge water). On August 2, 2000, Bluewater Network submitted an addendum to the petition with a request that EPA examine and develop recommendations on how to address air pollution from cruise ships. Both the March 17, 2000, petition and the August 2, 2000, addendum are hereafter referred to as the "petition." By today's response, EPA is granting the petition in part and denying the petition in part.

As a preliminary matter, we note that since the date of the petition, the context for EPA's consideration of the petition has changed.

- In December of 2000, Congress enacted legislation establishing discharge standards for sewage and graywater for cruise ships authorized to carry 500 or more passengers for hire operating in certain waters off Alaska.
- On September 18, 2006, the U.S. District Court for the Northern District of California vacated, effective on September 30, 2008, the EPA regulation at 40 C.F.R. 122.3(a), which excludes a discharge incidental to the normal operation of a vessel from the requirement for a National Pollutant Discharge Elimination System (NPDES) permit. *Northwest Environmental Advocates v. EPA*, No. C 03-05760 SI (N.D. Ca.). As of today's response, appeal of the District Court's order remains pending in the U.S. Court of Appeals for the Ninth Circuit. Given the date certain timing of the District Court's vacatur, however, EPA has begun an administrative process to prepare for NPDES permitting of discharges incidental to the normal operation of a vessel that, prior to September 30, 2008, are excluded from the NPDES permitting requirement. 72 Fed. Reg. 34241 (June 21, 2007) (notice of intent; request for comments and information).
- In 2003, EPA adopted emissions standards for nitrous oxides (NOx) from "Category 3" marine diesel engines, which are very large marine engines used primarily for propulsion power on ocean-going vessels such as container ships, tankers, bulk carriers, and cruise ships. 68 Fed. Reg. 9746, 9747 (Feb. 28, 2003) (codified at 40 C.F.R. Part 94). In addition, EPA recently solicited public comment on the scope of rules that EPA should propose for a second tier of Category 3 marine engine emissions standards. 72 Fed. Reg. 69522 (Dec. 7, 2007).
- EPA recently proposed regulations to establish standards for particulate matter from Category 2 marine engines. 72 Fed. Reg. 15938 (April 3, 2007).

These intervening actions have addressed some of the actions requested in the Bluewater Network petition, in some cases rendering portions of the petition moot.

Cruise Ship Discharge Assessment Report

As you are aware, EPA published for public comment the draft Cruise Ship Discharge Assessment Report ("Assessment Report"). 72 *Federal Register* 72353 (December 20, 2007). Therefore, EPA today GRANTS the portions of the petition requesting an assessment of cruise ship discharges, and a report of its investigations and findings. The draft Assessment Report includes:

- (1) an in-depth assessment of the volumes and characteristics of the spectrum of cruise ship waste streams identified in the petition, specifically, sewage, graywater, hazardous waste, solid waste, and oily bilge water;

- (2) an analysis of the potential impact of those waste streams on water quality, the marine environment, and human health; and
- (3) an examination of existing federal regulations governing those cruise ship waste streams.

In the invitation for public comment on the draft Assessment Report, EPA also requested public input on options, alternatives, and recommendations on whether and how to better control and regulate these waste streams. In the completed Assessment Report, EPA plans to identify a range of options and alternatives to address these waste streams, based on consideration of public comment. For the completed Assessment Report, EPA does not commit to formulation of any Agency recommendations on whether, and if so how, any existing EPA regulations should be revised. EPA intends to complete the Assessment Report by the end of the 2008 calendar year.

Recommended Content of Cruise Ship Assessment

The Bluewater Network petition identified a variety of items that EPA's cruise ship pollution assessment should include:

- (i) Quantification of the volumes of all waste streams from cruise ships and assessment of the adequacy of existing regulations to control such waste streams in such volumes;
- (ii) Scientific assessment of the impacts of these wastes on water quality, the marine environment, and human health;
- (iii) Delineation of options for a comprehensive monitoring, record-keeping, and reporting regulation for all pollutants discharged into U.S. waters and wastes offloaded at U.S. ports from cruise ships;
- (iv) An evaluation of the effect of repeal of 40 C.F.R. 122.3(a), thereby requiring NPDES permits for discharges of graywater and other incidental discharges;
- (v) Examination of the need for and best means of more strictly defining and regulating graywater;
- (vi) Clarification of the regulations governing, and permits, records, and reports required for all hazardous waste generated on cruise ships, both while at sea and once offloaded, and delineation of options for whether and how these should be strengthened; and
- (vii) Determination and implementation of effective means for EPA to encourage and assist the Coast Guard in fully enforcing its current regulations as efforts to strengthen protection from cruise ship pollution are made.

EPA has been mindful of these recommendations during the development of the draft Assessment Report. The draft Assessment Report addressed the recommendation that EPA quantify waste stream volumes (from recommendation (i)) and the recommendation for a scientific assessment of the impacts on water quality, the marine environment, and human health (from recommendation (ii)) for sewage, graywater, hazardous waste, solid waste, and oily bilge water. Regarding the recommendation for an

assessment of the adequacy of existing regulations to control these waste streams (from recommendation (i)), EPA does not commit to formulation of any Agency recommendations on whether, and if so how, any existing EPA regulations should be revised. However, EPA plans to identify a range of options and alternatives to address these waste streams in the completed Assessment Report, based on consideration of public comment. Recommendations (iv) and (vii) are addressed directly below. Recommendations (iii), (v) and (vi) regarding graywater and hazardous waste are detailed in specific requests in the body of the petition, to which EPA responds below.

Evaluation of Repeal of 40 C.F.R. 122.3(a)

On the recommendation regarding evaluating the effect of repeal of the EPA regulation at 40 C.F.R. 122.3(a), events subsequent to the petition have rendered this aspect of the petition MOOT. EPA has evaluated the effect of repeal of the EPA incidental discharge exclusion in the context of responding to a petition seeking repeal of that regulation submitted to the Agency in January 1999, as well as in litigation challenging the Agency's September 2003 denial of that petition. See, e.g., *Decision on Petition for Rulemaking to Repeal 40 C.F.R. 122.3(a)*, Declaration of James A. Hanlon (October 20, 2005), and Declaration of James A. Hanlon (May 23, 2007) (epa.gov/owow/invasive_species/ballast_report_petition_response.pdf), and Testimony of Benjamin H. Grumbles before the Water Resources Subcommittee of the House Transportation and Infrastructure Committee (March 7, 2007) (www.epa.gov/water/speeches/070307bg.pdf).

Coast Guard Actions

The petition recommends that EPA's assessment of cruise ships include "determination and implementation of effective means for EPA to encourage and assist the Coast Guard in fully enforcing its current regulations as efforts to strengthen protection from cruise ship pollution are made." Bluewater Network Petition at 2. In response to this request, EPA will meet with the Coast Guard to identify and discuss ways in which EPA could assist the Coast Guard in the various areas raised by the petition. Therefore, EPA today GRANTS this portion of the petition.

The Bluewater Network petition further urged EPA to implement the recommendations outlined in a report prepared by the U.S. General Accounting Office entitled *Marine Pollution: Progress Made to Reduce Marine Pollution by Cruise Ships, but Important Issues Remain*, GAO/RCED-00-48, February 2000. The GAO report did not direct its recommendations to EPA, but rather to the Secretary of Transportation, who at that time headed the agency in which the Coast Guard was operating. Though EPA works cooperatively with the Coast Guard on a variety of matters related to vessel discharges, this portion of the petition would be appropriately addressed to the Coast Guard. Therefore, EPA today DENIES this portion of the petition.

Sewage

The petition specifically requests that EPA “identify alternatives for regulating sewage discharges from vessels that address impacts from such pollutants as increased biological oxygen demand (BOD), chlorine, and ammonia, and provide for more comprehensive sampling, monitoring and reporting of sewage discharges by the cruise ship industry.” Bluewater Network Petition at 4. EPA today GRANTS this portion of the petition to identify alternatives for regulating sewage discharges from cruise ships, as well as alternatives relating to sampling, monitoring, and reporting of sewage discharges. In the completed Assessment Report, EPA plans to identify those alternatives, after considering comments submitted on the draft Assessment Report.

Graywater

The petition specifically requests that EPA “identify and explore a range of options to more narrowly define and regulate graywater, and take regulatory action on those determined to be most effective at addressing the above concerns.” Bluewater Network Petition at 4. The “above concerns” refer to a preceding paragraph describing inadequate regulation of graywater under current regulations based on the 2000 GAO report, the rulemaking process under Clean Water Act section 312(n) (also known as the “Uniform National Discharge Standards”), and contentions by the U.S. delegation to the International Maritime Organization’s Marine Environment Protection Committee in December 1999. EPA today GRANTS this portion of the petition in part; in the completed Assessment Report, EPA plans to identify and explore a range of options regarding the definition and regulation of graywater, after considering comments submitted on the draft Assessment Report. EPA today DENIES the remaining portion of the graywater request regarding regulatory action as premature and unspecific; EPA does not commit to take any regulatory action on whether, and if so how, any existing EPA regulations should be revised.

Hazardous Wastes

The petition specifically requests that EPA “clarify the regulations governing, and permits required for, all hazardous and toxic wastes generated by the cruise ship industry, both while at sea and once offloaded, and delineate options for whether and how these should be strengthened.” Bluewater Network Petition at 6. The petition asserts lack of clarity on two particular questions: (1) whether cruise ships are classified as small quantity generators, large quantity generators, or conditionally exempt small quantity generators under the Resource Conservation and Recovery Act (RCRA); and (2) whether each ship should be considered as a distinct generator under RCRA or whether a company as a whole or a facility which may store hazardous wastes from several ships should be considered as the generator. Bluewater Network Petition at 5. EPA today GRANTS this portion of the petition. The draft Assessment Report clarifies the applicable requirements, including whether each ship should be considered a distinct generator under RCRA, and EPA invited public comment on that clarification. EPA

plans to incorporate into the completed Assessment Report responses to comments, as appropriate.

Solid Wastes

The petition specifically requests that EPA “gather data on the volumes of solid waste generated by cruise ships, outline options to address inadequate port reception facilities, work with the Coast Guard to formulate means to ensure compliance with the Marine Protection, Research, and Sanctuaries Act (MPRSA) and Act to Prevent Pollution from Ships (APPS) (such as matching port receipts for garbage to ships’ Garbage Record Books for inconsistencies), and examine options for regulations requiring sampling and testing of incinerator ash.” Bluewater Network Petition at 6. This portion of the petition identifies particular environmental concerns associated with floating plastic debris, as well as batteries and other trash that would cause garbage to be hazardous if mixed with other solid waste to be incinerated, thus potentially causing incinerator ash discharged at sea to be rendered hazardous.

EPA today GRANTS in part and DENIES in part this portion of the petition. In the draft Assessment Report, EPA arrayed a variety of estimates relating to the generation of solid wastes, and invited public comment. EPA plans to incorporate into the completed Assessment Report responses to comments, as appropriate. Therefore, EPA today GRANTS the request to gather data on the volumes of solid waste generated by cruise ships.

The adequacy of port reception facilities is a matter regulated by the Coast Guard, not EPA, and would be appropriately addressed to the Coast Guard. Therefore, EPA today DENIES the request to outline options to further address inadequate port reception facilities. The regulations applicable to port reception facilities for garbage are published at 33 C.F.R. Part 158. Under those regulations, the Coast Guard administers the reception facility “Certificate of Adequacy” (COA) program for certification, including periodic inspection, of the port reception facilities to which those regulations apply. All port facilities and terminals under the jurisdiction of the United States, including commercial fishing facilities, mineral and oil shore bases, and recreational boating facilities, must have a garbage reception facility that meets the regulatory requirements for adequacy. 33 C.F.R. 158.133(c). These regulations apply to U.S. ports and terminals that receive garbage from cruise ships. Though only a subset of those ports require a COA, (see 33 C.F.R. 158.135(c) for COA criteria with respect to Annex V wastes), Coast Guard field units regularly inspect all port reception facilities for adequacy, regardless of the requirement for a COA, and investigate all allegations of inadequate reception facilities.

Additionally, the petition’s recommendation regarding matching port receipts to ships’ Garbage Record Books is appropriately addressed to the Coast Guard, which administers the domestic legislation to implement relevant United States obligations under the International Convention to Prevent Pollution from Ships, also known as MARPOL. Therefore, EPA today DENIES this request, which would be appropriately

addressed to the Coast Guard. To the extent that this request encompasses other potential actions to address an unidentified problem regarding compliance with the MPRSA or APPS, EPA today DENIES this portion of the petition for lack of specificity.

The Coast Guard regularly inspects vessel discharge records and logbooks required by MARPOL and investigates all allegations of illegal discharges on the high seas or within United States waters. Receipts and record-keeping for Annex V waste streams from ships are addressed in MARPOL Annex V, Regulation 9. The domestic implementing regulation for record-keeping is published at 33 C.F.R. 151.55. EPA notes that the United States (as a party to the Convention), with active Coast Guard engagement, participates in international work groups in efforts to standardize both Advance Notice Forms generated by vessels with respect to their reception facility needs for all wastes and a standard receipt form for such wastes. Addressing this standardization issue in order to improve the performance of port reception facilities for solid waste management has been an ongoing effort by the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) since at least October 2004. The Coast Guard itself has focused on ways to address standardized reporting, including updates to implementing regulations and Coast Guard instructions that provide guidance to its field units. Implementation of standardized receipts, as proposed by the MEPC in June 2007, will enhance the capacity of Coast Guard inspectors to confirm both allegations of illegal discharges and reports of inadequate reception facilities (approximately 80 reports of inadequacies were received and investigated in 2007). Coast Guard inspectors will be able to compare Advance Notice records with reception facility receipts, which are required to be kept with the vessel garbage log book for a period of two years pursuant to Section 4.2 of the Appendix to MARPOL Annex V, 2006 Consolidated Edition. Currently, reports of inadequate reception facilities are available through the IMO's Global Integrated Shipping Information System public website at <http://gis.imo.org/Public/>.

Finally, regarding incinerator ash, the draft Assessment Report examines existing requirements applicable to incinerator ash, and EPA invited public comment on that examination. EPA plans to incorporate into the completed Assessment Report responses to comments, as appropriate. In the completed Assessment Report, EPA also plans to examine options and alternatives to address incinerator ash. Therefore, EPA today GRANTS the request to examine options for regulations requiring sampling and testing of incinerator ash.

Oily Bilge Water

The petition specifically requests that EPA "outline options for how to improve and strengthen the monitoring and enforcement of cruise ship activities subject to the Oil Pollution Act and Coast Guard regulations at 33 C.F.R. Parts 151, 153, and 155." Bluewater Network Petition at 7. Because the cited regulations were promulgated by the Coast Guard, this portion of the petition is appropriately addressed to the Coast Guard. Therefore, EPA today DENIES this portion of the petition. EPA does note, however, that since the Bluewater Network filed the petition in March 2000, the U.S. Department of

Justice and the Coast Guard have continued to pursue a Vessel Pollution Initiative to prosecute those who illegally discharge pollutants from ships, including cruise ships. That Initiative has resulted in several successful and high-profile prosecutions (either guilty pleas or convictions) related to illegal dumping of waste oil, including conspiracy, false statements, obstruction of justice, and criminal violations of the Clean Water Act/Oil Pollution Act and the Act to Prevent Pollution from Ships.

Tracking of Cruise Ship Pollution

The final specific request in the petition asks that EPA “delineate options for a comprehensive monitoring, record-keeping and reporting regulation or program for all pollutants discharged into U.S. waters and wastes offloaded at U.S ports from cruise ships.” Bluewater Network Petition at 7. This request is stated very broadly to encompass “comprehensive” monitoring, record-keeping, and reporting for “all” pollutants. Unlike the other specific requests in the petition, this portion does not identify a basis or concern to be addressed. EPA’s responses above address this request to the extent the request encompasses similar requests specific to the discharge or offloading of sewage, solid wastes, hazardous wastes, and oily bilge water. EPA today DENIES the balance of the request for lack of specificity, particularly to the extent it encompasses monitoring, record-keeping, and reporting for other discharges that are not specifically identified in the Bluewater Network petition.

Furthermore, in relation to discharges incidental to the normal operation of a vessel, e.g., graywater, this portion of the petition has been rendered MOOT because EPA is evaluating implementation measures (including monitoring, record-keeping, and reporting) for discharges incidental to the normal operation of a vessel as part of the administrative process initiated in response to the *Northwest Environmental Advocates* litigation described above. Should the District Court’s order be reversed or modified on appeal in a manner that ends that process (or otherwise renders that process inappropriate for the purpose of identifying and evaluating options for monitoring, record-keeping and reporting for graywater), EPA today DENIES this portion of the request as premature unless and until EPA regulates graywater discharges from cruise ships.

Air Pollution


The addendum to the original Bluewater Network petition requested that EPA extend its analysis of cruise ship waste streams to include an assessment of air pollution from cruise ships and formulation of options to better control and regulate cruise ship air emissions. The addendum recommended that an extended assessment include certain matters relevant to air pollution that differed from the matters recommended in the original petition relevant to sewage, graywater, hazardous waste, solid waste, and oily bilge water. Specifically, the petition addendum recommended that EPA assess “establishment of enforceable standards for NO_x, SO_x, and particulate matter from Category 3 marine engines, and particulate matter for Category 2 vessels” on cruise ships. As noted above, EPA has proposed regulations for Category 2 marine engines, promulgated final regulations for NO_x from Category 3 marine engines, and solicited

public comment on whether and what to propose as further regulations for Category 3 marine engines. As such, the Bluewater Network petition's recommendation regarding the assessment and formulation of regulatory options has become MOOT because cruise ship engine emissions fall into the broader category of emissions from marine engines addressed by the proposed and final rules. Likewise, the portion of the petition that recommends that EPA report on its investigations and findings relating to air pollution also has become MOOT in light of the preamble discussions associated with the Category 2 and Category 3 regulations.

EPA also notes that negotiations for amendments to the standards under MARPOL Annex VI, including NO_x and SO_x emission limits, officially began in April 2006, with the most recent round of negotiations taking place in April 2007. The United States submitted a paper to that meeting (April 2007 Bulk Liquids and Gases Sub-Committee meeting, referred to as BLG-11) setting out an approach for new international engine and fuel standards. Discussions are expected to continue through the summer of 2008 and are expected to conclude at the MEPC meeting in October 2008.

Please be assured that EPA is giving careful consideration to pollution from cruise ships. I look forward to working with you and the other petitioners on this important effort. If you have further questions on this matter, please contact me or Elizabeth Kim of my staff at (202) 566-1270.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Grumbles', with a stylized flourish at the end.

Benjamin H. Grumbles
Assistant Administrator

1/31/08